

Office Memorandum

DEPARTMENT PHARMACY BOARD

TO : Mr. George G. Goodwin, Secretary of the Senate
& Mr. Edward Burdick, Chief Clerk of the
House of Representatives.

DATE: Dec. 6, 1972

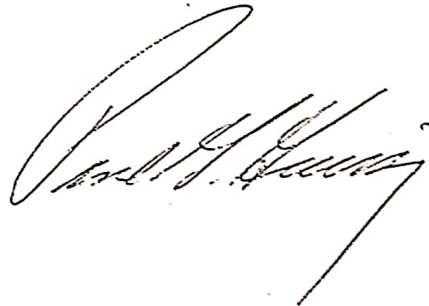
FROM : Paul G. Grussing, Secretary

SUBJECT: Report of the Board of Pharmacy and its Advisory Council
on Controlled Substances.

Enclosed herewith is the biennial report of the board and its Advisory Council on Controlled Substances as required by M.S. 152.02. At its December 5 meeting the board approved and endorsed the report of the Advisory Council and began plans to develop amendments which would carry out the objectives of the report. The report recommends four legislative changes involving; the rescheduling process, tenure of the Advisory Council, Marihuana, and forfeiture provisions.

cc: Governor Wendell Anderson
cc: Senator William Dosland
cc: Representative Lyall Schwarzkopf
cc: Governor's Commission on Drug Abuse

PGG/nv



Report of the
Advisory Council on Controlled Substances
of the
State Board of Pharmacy

The Advisory Council on Controlled Substances met six times during the biennium and reports the following activities:

1. Participation in the re-scheduling of stimulant drugs from Schedule III to Schedule II.
2. Ongoing review of reports of drug abuse involving both controlled drugs and drugs which are not controlled under M.S. 152.
3. Research into the incidence of abuse of pentazocine and propoxyphene in Minnesota.
4. Review of the implementation of Chapter 937, Laws of 1971, by agencies, organizations, and persons involved in the criminal justice system and in the health science field.
5. Development of legislative recommendations contained in this report.

In general, the Advisory Council finds that Chapter 937, Laws of 1971, has met the objectives of its sponsors and authors, and it recommends no major changes in the existing law (M.S. 152). Chapter 937 has recodified all drug classifications, prohibitions and penalties into a single chapter, repealing the old uniform narcotics law, Chapter 618. Thus, the number of statutory provisions and regulations has been reduced by 50%. Although the statutory nomenclature for controlled substances is of necessity technical, law enforcement personnel have been assisted by the cross-referencing of all statutory names to common or trade names in Regulation 51 of the State Board of Pharmacy.

The five-schedule classification system enacted in Chapter 937 is rational and has enabled the establishment of a workable penalty structure.

Proper flexibility has been provided to allow re-scheduling by the State Board of Pharmacy to facilitate conformity with federal regulations. Such conformity has been maintained.

The law effectively distinguishes between the act of drug use and the act of drug distribution.

The Council is mindful of the importance of educational and rehabilitative aspects of the drug abuse problem but has limited its study and recommendations to the law enforcements aspects of the problem as contained in Chapter 937.

The Council recommends only four minor changes in M.S. 152. These recommendations comprise the balance of the report.

A. Rescheduling

A category of stimulant drugs was rescheduled by the Board, upon recommendation of the Advisory Council, from Schedule III to Schedule II. Board Regulation No. 51¹ was modified by the re-scheduling of amphetamine, methamphetamine, phenmetrazine, and methylphenidate products. The modified regulation was filed with the Secretary of State and Commissioner of Administration on March 7, 1972.

Effect of the rescheduling. The rescheduling was accomplished to bring state regulations into conformity with federal regulations.² The effect on medical and pharmaceutical practice was to require written prescriptions for the rescheduled stimulant drugs. An additional effect of the federal rescheduling was to place production quotas upon the manufacturers of these drugs. The medical and pharmaceutical professions in Minnesota have acted jointly through their professional associations in resolving that the prescribing and dispensing of amphetamine products should be limited to treatment of narcolepsy and hyperkinesis.

The rescheduling process. Extreme care was taken to present adequate evidence to support the proposed rescheduling. In a public hearing held on January 6, 1972, members of the Advisory Council submitted reports of their own research into various aspects of the abuse problem involving stimulant drugs.³ Evidence was submitted relating to: disorders, diseases, and death caused by these drugs; history of abuse of the drugs in Japan, Sweden, and the United States; accepted uses with restrictions as well as unaccepted and controversial uses of these drugs; diversion of the drugs from pharmacies by burglary and theft; chemistry of drug compounds; dependence, both physiological and psychological on the drugs; scope of abuse of the drugs as reported in the field of education; selected reports of the relationship of abuse of the drugs to crime, tolerance to the compounds and risks to health because of anti-social behavior, violence, suicides, false bravado and crime, etc.; scope of the abuse problem in relationship of the compounds with crime; the pharmacology of the compounds (both central nervous system and peripheral) plus their toxicity; and the scope of abuse of these substances viewed from medical care institutions. The thorough research of council members reported at the January 6 hearing demonstrated a correlation with the findings of the federal Bureau of Narcotics and Dangerous Drugs which had previously accomplished the rescheduling on a federal level. Advocates of the rescheduling included representatives

from the pharmaceutical and medical professions as well as a drug law enforcement officer from a major city. There were no objections to the proposed rescheduling during or after the hearing.

Model Controlled Substances Act. The law clearly mandates the Board in consultation with the Advisory Council to conduct a thorough search of the medical and sociological literature in support of any addition of drugs to come under the meaning of the act or in support of any rescheduling of drugs within the existing act." This very sound policy serves to prevent any arbitrary rescheduling or adding of substances without sufficient cause. However, the Council questions the necessity of developing a voluminous body of supportive testimony in evidence for the rescheduling of substances to achieve absolute conformity with the federal law when the federal agency has previously established the pharmacological and sociological reasons for the rescheduling effort. The so-called Model Controlled Substances Act⁵ allows states to "regulate by reference" to the existing federal regulation in cases where state proposed rescheduling changes are only for the purpose of maintaining conformity with the federal law.

The Model Act, however, also contains a provision⁶ for the state agency to hold a public hearing and act affirmatively if it elects not to reschedule or add a drug which has been previously rescheduled or added in the federal regulations or if it elects to reschedule or add a drug which is not found in the federal regulations. Thus, the state would not regulate by reference absolutely but could exercise an option not to adopt federal scheduling standards if it wished, and it may also elect to control drugs not previously scheduled under the federal law by holding a public hearing and otherwise proceeding under the administrative procedures act. The Council is mindful of the opinions of past members of the House and Senate Judiciary Committees in this area, and for that reason the Board did not recommend this and other aspects of the Model Law to the 1971 Legislature. However, having experienced one major rescheduling process the Council wishes to raise the question in light of that experience, and recommends that portions of the Model Act be adopted to eliminate the necessity of duplicative hearings in certain cases.

B. Council Research

Propoxyphene and pentazocine survey. Reports of abuse of propxyphene and pentazocine led the Council into a major research project concerning the scope of abuse of these substances in Minnesota. Thirty Minnesota hospitals were contacted for reports of prooxyphene and pentazocine abuse. Detailed clinical and statistical information was requested, and of the 23 answering hospitals, 8 reported a total of 28 cases of propoxyphene abuse and 9 reported a total of 31 cases of pentazocine abuse. Four of the largest hospitals in the state did not respond to the survey

although it was known that research into the abuse potential of these substances was being conducted in at least one of these hospitals. Because of a high incidence of multiple drug use among propoxyphene and pentazocine abusers, and also because the absence in many cases of adequate supporting data, however, the results of the survey were judged inconclusive.

The survey was accomplished in cooperation with the federal Bureau of Narcotics and Dangerous Drugs and collected data in the form requested by BNDD. Although the Council's participation in the collection phase of the survey has been completed, the BNDD is continuing its research into the problem. The Council is hopeful, that after BNDD completes its research, control can be achieved by the federal agency. Scheduling of these drugs would be facilitated by federal rather than state regulatory action because of the greater capability of the federal agency to research the problem on a national scope and in a manner that would produce evidence sufficient to deter any possible attempts at litigation by drug manufacturers. The Council is also mindful that regulatory action by a single state might thwart the national rescheduling effort, if manufacturers would enter into litigation on the basis that the statutory standard for scheduling was not met by that state.

Review of Existing Schedules. The statute requires an annual review of the placement of controlled substances in the various schedules.^a This is essentially a perpetual process in that the Council reviews isolated reports of abuse of substances. The process of rescheduling of stimulant drugs was begun on November 10, 1971, and the propoxyphene-pentazocine abuse study was begun in early 1972. The Council has reviewed isolated reports of abuse of other drugs and has found that the pattern, scope, and significance of the abuse in these instances was not sufficient to propose rescheduling under the authority given.

Tenure of Advisory Council

M.S. 152.02, Subd. 11, does not provide for the length of council appointments. The Council recommends that this chapter be amended requiring that on or before July 1, 1973 the Board shall nominate 6 persons for a 1 year term and 6 persons for a two year term on the Advisory Council. Thereafter, it is recommended that the term of office shall be two years.

Marihuana

Marihuana has become one of the most controversial social issues of our time. Rather than being based solely on known facts, however, arguments both for and against marihuana have ranged from

the exaggerated to the oversimplified. Such arguments are believed to have hindered solution of the marihuana problem and created a marihuana problem "problem" of its own.

Like all complex social issues, the Council recognizes that the marihuana problem cannot be simply solved. The effects of marihuana are neither totally good nor totally bad, but lie somewhere in-between. In this regard, we sought to determine the relative dangers of marihuana, place them in proper societal context, and propose what we consider at the present time to be the best solution to the problems at hand.

At the time of passage of the 1971 Controlled Substances Act, relatively few scientific facts were known about the short-term and long-term effects of marihuana use. Since that time, however, a considerable amount of the pharmacological, psychological, and sociological research begun earlier with marihuana has been completed, and new facts added to our knowledge about the drug. These facts suggest a revision of marihuana penalties in the existing state law.

Present Estimates of Use. According to a recent national survey, marihuana use is wide-spread in all segments of the United States population, involving an estimated 24,000,000 Americans over 11 years of age.⁹ Usage is highest in urban and suburban areas, but not uncommon in rural areas as well. The Northeast and West regions of the country have the highest rates of marihuana use, followed by the North Central region and then the South. Most marihuana users (39%) are concentrated in the 16-25 age bracket, with college students being more likely than non-college students in using the drug.¹⁰ Use is slightly more predominant among persons with above-average incomes.

Patterns of Use. Almost half of the people who have ever used marihuana report they no longer use the drug (41% of adults, 45% of youth).¹¹ The majority of adults (61%), when asked why they terminated marihuana use, reported they had simply lost interest in the drug. Only a small percentage of marihuana users ever become heavy users. In the North Central states, for example, 5% of the ever-users of marihuana continue to use the drug more than once a week, and less than 0.5% of the ever-users use the drug more than once a day (as compared to 4% in the West).¹²

Profiles of Users.

1. Experimental Users (once a month or less; 50-60% of ever-users). Quite conventional, practically indistinguishable from non-users in terms of life style, social activities, and vocational or academic performance.

2. Intermittent Users (2-10 times monthly; 12-19% of ever-users). More inclined to seek and emphasize social rather than personal aspects of the drug. More liberal politically and socially, but generally conventional in most respects.
3. Moderate Users (10 times a month to once daily; 5-6% of ever-users). Characteristics between intermittent and heavy users.
4. Heavy Users (several times daily; 2-4% of ever-users). Generally, the heavy marihuana user's life style, activities, values, and attitudes are unconventional and differ from those of society.
5. Very Heavy Users (constant intoxication with very potent cannabis preparations). Very rarely seen in this country. In North African and Asian countries where cannabis is widely cultivated and its use is deeply ingrained, very heavy use is associated with religious rites, as a folk medicine, and to escape monotony of life.¹³

Becoming a User. The decision to use marihuana is related to the use of medicines, alcohol, and tobacco by the parents.¹⁴ Youth who experiment with marihuana are similar socially and psychologically to those who use alcohol and tobacco. There is a close association between marihuana use and cigarette smoking and liquor drinking.¹⁵ Reasons given for first using marihuana by youth are to satisfy curiosity (55%), experience something new and exciting (47%), and to get "kicks" or to get high (27%).¹⁶ Friends, not strangers, most often introduce a youth to marihuana.¹⁷

Marihuana use is also a convenient instrument of youth for social protest and group solidarity.

Public Safety. No evidence exists that marihuana use by the normal individual either causes or leads to violent and aggressive behavior,¹⁸ or to non-violent or delinquent behavior.¹⁹ The effect of marihuana on automobile driving has not been conclusively demonstrated, but driving under the influence of any psychoactive substance may be a serious hazard to public safety.

Consequences Related to Use. Any psychoactive drug is potentially harmful to the individual depending on the amount, frequency, and duration of its use.

1. Experimenters and Intermittent Users (62-79%)
 - a. Little or no psychological dependence
 - b. Influence on behavior related largely to conditioning to drug use and its social value to the user

- c. No organ injury demonstrable
- 2. Moderate Users (5-6%)
 - a. Moderate psychological dependence increasing with duration of use
 - b. Behavioral effects minimal in stable personalities, greater in those with emotional instability.
 - c. Probably little if any organ injury
 - d. Duration of use increases probability of escalation of all effects including shift from moderate to heavy use
- 3. Heavy Users (2-4%)
 - a. American "pot head"
 - b. Strong psychological dependence
 - c. Detectable behavior changes
 - d. Possible organ injury (chronic diminution of pulmonary function)
 - e. Effects more easily demonstrable with long-term use
- 4. Very Heavy Users
 - a. Users in countries where the use of cannabis has been indigenous for centuries
 - b. Very strong psychological dependence to point of compulsive drug seeking and use
 - c. Clear-cut behavioral changes
 - d. Greater incidence of associated organ injury²⁰

Relation to Consequences from Use of Other Drugs. In general, the consequences of marihuana use are far less harmful to the individual and society than the use of alcohol and tobacco and other non-medical drugs.²¹

Common Misconceptions.

- 1. Marihuana is not a very lethal drug. The dose required for death is enormous and for all practical purposes unachievable by humans smoking marihuana.
- 2. There is no evidence of chromosomal damage or teratogenic or mutagenic effects due to marihuana at doses commonly used by man.
- 3. There is no objective evidence of specific pathology of brain tissue from marihuana use. Neither have outstanding abnormalities in psychological tests, psychiatric interviews, or coping patterns been conclusively documented. For the most part, the immediate effects of marihuana on bodily functions are transient and of little significance.

4. Marihuana does not lead to physical dependence as is seen with drugs such as heroin, barbiturates and alcohol.
5. The overwhelming majority of marihuana users do not progress to other drugs.²²

Problems with Present Gross Misdemeanor Status of Marihuana.

1. Based on the current assessment of the risks of marihuana, the penalties for simple possession of marihuana are not in line with the known dangers of the drug to the individual and society. Such practices breed disrespect for the law, and make drug abuse education more difficult in face of the relative greater dangers from the use of other classes of drugs.
2. The present penalties are neither enforceable nor enforced. Federal authorities make little or no effort to seek out violators of marihuana possession laws. At the state level, the Bureau of Criminal Apprehension does not concentrate its efforts in this direction, although local agencies may. Because of the high frequency of marihuana use, if the laws were uniformly enforced the district courts would be greatly overburdened with marihuana cases and function less effectively in dealing with other crimes.
3. Under the present system, unequal justice is implied when some are arrested for marihuana possession and others are not, or when the penalties for some are greater than for others for the same offense. This practice often causes undesirable results and may constitute a violation of due process of law.

Recommendations:

1. Because it is a substance capable of producing intoxication and has properties that sometimes lead to chronic heavy use, the Council believes the use of marihuana should be discouraged by all aspects of society. Until more effective means can be developed, legal control of marihuana should be continued as a method for discouraging its use.
2. Since intermittent-to-moderate use of marihuana apparently constitutes little health risk to the individual or society, however, penalties for possession of a small amount of marihuana should not constitute a greater risk to the individual or society than would occur from the drug

itself. Individuals found in possession of a small amount of marihuana should not therefore be incarcerated after sentencing, as this is felt in the present case to be potentially more harmful to the individual and society.

3. For the above reasons, the Council recommends the possession of a small amount of marihuana be reduced to a simple misdemeanor, and carry a maximum fine of \$100 with no incarceration after sentencing.
4. If an individual is unable to pay the fine imposed for possession of a small amount of marihuana, the court should be given the discretion to request that the individual be assigned to a municipal, county, or state agency for an appropriate period of public service work. In no case should such an action unreasonably interfere with the individual's academic or economic responsibilities.
5. Since the potential risks to the individual and society increase with the frequency and duration of marihuana use, conviction on a third, or subsequent offense within one year for possession of a small amount of marihuana should be punished by a fine of up to \$300, or imprisonment not to exceed 90 days, or both, with recommended psychiatric or psychological evaluation.
6. If no subsequent conviction for possession of a small amount of marihuana should occur within one year of the original conviction, the individual's official record of the original conviction should be automatically expunged.
7. Distribution of a small amount of marihuana for no remuneration or insignificant remuneration should also constitute a simple misdemeanor, with a maximum fine of \$100 and no incarceration after sentencing.
8. The Council recommends no changes in the existing penalties for possession or distribution of marihuana in other than a small amount.
9. Because marihuana can produce intoxication and may thereby impair driving ability or performance, possession of a small amount of marihuana in a readily usable form (e.g., rolled marihuana cigarettes, cookies, etc.) in an accessible area of an automobile or other motor vehicle should constitute a gross misdemeanor and suspension of driver's license. "Readily usable form" would not include a small amount of loose marihuana in any place, or a small amount

of marihuana in any form in an inaccessible place (e.g., locked trunk). This recommendation is similar to the "open-bottle" provision regarding driving and the use of alcoholic substances. The Council recognizes the hazards to public safety from driving a motorized vehicle while intoxicated on any substance, and recommends that the appropriate statutes be amended to consider all such offenses a gross misdemeanor.

10. Since punishment has been repeatedly shown to be maximally effective when delivered immediately and consistently after behavior, the penalty for possession of a small amount of marihuana should be rigidly and uniformly enforced. This penalty should be applied state-wide and pre-empt local ordinances.
11. In the event that the legislature should decide to decriminalize marihuana in the future, consideration should be given in advance to control measures that will minimize the public health, economic, and administrative problems resulting from such an action. Of particular importance at the present time would be the collection of data from within the state on 1) the frequency and demographic characteristics of marihuana users, 2) the frequency and demographic characteristics of those arrested for marihuana possession, and 3) the percent of those arrested for marihuana possession also found in possession of other drugs.

E. Forfeiture Provisions

Section M.S. 152.19 permits "the appropriate state agency" to seize quantities of drugs together with manufacturing equipment and conveyances. Problems have occurred in connection with the seizure, especially of conveyances, in that the meaning of "appropriate state agency" is not clear. The Council believes the legislative intent might have been to permit the Bureau of Criminal Apprehension to seize equipment, conveyances, and drugs in illicit channels and for the Board of Pharmacy to seize drugs in legitimate channels of distribution.

The Council recommends that legislation enable seizure to be accomplished by the Bureau of Criminal Apprehension, the Board of Pharmacy, sheriffs, and city police departments in municipalities containing 25,000 or more inhabitants. Police in smaller jurisdictions may obtain the drug or conveyance for purposes of evidence and then call upon the county sheriff if seizure is warranted.

The Council also recommends that M.S. 152.19 be further amended to permit the seizure of monies which are associated with the sale of controlled substances. Testimony before the Council²³ suggested that this would act as a deterrent to drug sale and would provide useful "buy money" for use in drug investigation work. Such monies could also be utilized for rehabilitative or educational programs.

References

- 1 Available from the Documents Section, Department of Administration
- 2 Orders published in the Federal Register: Page 20686, October 28, 1971; Page 15744, dated August 18, 1971; Page 13686, dated July 23, 1971; and Page 12734, dated July 7, 1971, all amending 21CFR, Parts 301 and 308.
- 3 Reports of Advisory Council
- 4 M.S. 152.02, Subd. 8
- 5 Uniform Controlled Substances Act, drafted by the National Conference of Commissioners on Uniform State Laws, adopted and recommended for enactment on August 7, 1970.
- 6 Article II, Section 201 (d)
- 7 Survey
- 8 M.S. 152.92, Subd. 8
- 9 National Commission on Marihuana and Drug Abuse, 1972, p. 32
- 10 Perry, et. al., Social Research Group, George Washington University, 1972
- 11 National Commission on Marihuana and Drug Abuse, 1972, p. 34
- 12 Ibid., p. 35
- 13 Ibid., pp. 36-41
- 14 Smart, et. al., Addictions, 1971, 18, 3.
- 15 Columbia University, School of Public Health, 1971
- 16 Abelson, et. al., Public Attitudes towards Marihuana, Princeton, N.J., 1972
- 17 Ibid
- 18 National Commission on Marihuana and Drug Abuse, 1972, pp. 7;-731
- 19 Ibid, p. 74-76
- 20 Ibid, p. 55
- 21 Kaplan, Marihuana: The New Prohibition, New York, 1971
- 22 National Commission on Marihuana and Drug Abuse, 1972, pp. 83-89
- 23 Public Hearing of the council, September 21, 1972. Comments were invited from representatives of public and private agencies involved in the law enforcement and health care fields.

MINNESOTA STATE BOARD OF PHARMACY
Advisory Council on Controlled Substances

1. Dr. Dale Dodson, D.O.**
314 Washington St.
Northfield, MN. 55057
507-645-4720
2. Dr. David Hancock, Executive Director
Lynville Treatment Center
RR 2,
Jordon, MN. 55352
266-4266
3. Dr. Wilbert J. Henke, M.D.
2431 Angell Rd.
St. Paul, MN. 55118
222-6309
4. Mr. Steven Kowalsky ***
College of Pharmacy
University of Minnesota
Minneapolis, MN. 55455
373-2187
5. Dr. James Janeczek, M.D.
2555 N.W. Eighth St.
New Brighton, MN. 55112
227-2144
6. Mr. Carl Knutson, Supervisor
Health, Phy. Ed., & Traffic Safety
Instruction Div.,
Dept. of Education
Centennial Bldg.
St. Paul, MN. 55101
221-3757
7. Honorable David E. Marsden, Judge
2nd District
Ramsey Co. Courthouse Bldg.
St. Paul, MN. 55101
223-4718
8. Dr. Robert Maslansky, M.D.
4701 Humboldt Ave. S.
Minneapolis, MN. 55409
336-4308
9. Mr. Gary Nelson, Chief
Bureau of Narcotics Unit
Bureau of Criminal Apprehension
1246 University Ave.
St. Paul, MN. 55104
221-2831
10. Mr. John H. Nelson ****
Sward-Kemp Drug Co.
Box 419
Redwood Falls, MN. 56283
507-637-2911
11. Dr. Roy Pickens, Ph.D.*
Associate Professor
Dept. of Psychiatry
Box 392 Mayo Hospital
U of M
Minneapolis, MN. 55455
373-3898
12. Mrs. June E. Winter, R.N.
1363 Jessie St.
St. Paul, MN. 55101
774-1857

* Council Chairman

** Council Vice-Chairman

*** Replacing Mr Joel Houghlum

**** Replacing Mr Maurice Hillestad

Minnesota State Board of Pharmacy
1965 Ford Parkway
St. Paul, MN. 55116
698-0806 or 221-3931
Paul G. Grussing, Secretary

Rev. 11-16-72